IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2687 OF 1999

Municipal Corporation of Greater Mumbai, a statutory body incorporated under the Mumbai Municipal Corporation Act, 1888 having its office a Mahapalika Marg, Mumbai-400 001. .... Petitioners

\- Versus -

1. State of Maharashtra

2. The Desk Officer (Revenue & Forest Department, having its office at Mantralaya, Mumbai-400 032.

3. The Special Land Acquisition Officer (7), having office at Chhatrapati Shivaji Maharaj Market, Mumbai-400 001.

4. The Colaba Land & Mill Co. Ltd., a Public Limited Company, having its registered office at 1017, Raheja Chambers, 213, Nariman Point, Mumbai-400 021. .... Respondents

Sarvasri K.K. Singhvi, Senior Counsel, with U.J. Makhija and Vinod Mahadik for the Petitioners.

Sarvasri Milind Sathe with M.D. Naik, Asst. Government Pleader, for the Respondent Nos.1 to 3.

Sarvasri E.P. Bharucha, Senior Counsel, with S.J. Kathawala i/b Raju Moray for the Respondent No.4.

WITH

WRIT PETITION NO.1392 OF 1999

The Colaba Land & Mill Co.

Ltd., a Public Limited Company, having its registered office at 1017, Raheja Chambers, 213, Nariman Point, Mumbai-400 021. .... Petitioners

- Versus -

1. State of Maharashtra

2. The Special Land Acquisition Officer (7), having office at Chhatrapati Shivaji Maharaj Market, Mumbai-400 001.

3. Brihanmumbai Municipal Corporation having its office at 1, Mahapalika Marg, Mumbai-400 001. .... Respondents

Sarvasri E.P. Bharucha, Senior Counsel, with S.J. Kathawala i/b Raju Moray for the Petitioners.

Sarvasri Milind Sathe with M.D. Naik, Asst. Government Pleader, for the Respondent Nos.1 & 2.

Sarvasri K.K. Singhvi, Senior Counsel, with U.J. Makhija and Vinod Mahadik for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR & V.M. KANADE, JJ.

DATED: SEPTEMBER 19 & 20, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment.

2. In Writ Petition No.2687 of 1999 the petitioner-Corporation seeks to challenge the Government decision in relation to fixation of the market value for

the acquired land, as also the award dated 8-2-1999, passed by the Special Land Acquisition Officer based on the said circular in relation to the land bearing C.S.No.649, situated at Colaba, Mumbai, whereas in Writ Petition No.1392 of 1999 the owners of the land under acquisition seek direction for forthwith payment of the amount awarded under the said award dated 8-2-1999.

3. Consequent to the finalisation of the development plan for the concerned area including the Colaba division by 20-7-1990, the owners of the plot in question served the statutory notice upon the State Government on 14-12-1992. The notice was confirmed by the respondent No.1-State on 19-5-1993 which was followed by the resolution of the Corporation for acquisition of the land in question and consequently a declaration under Section 126(2) and 126(4) of the Maharashtra Regional and Town Planning Act, 1966, hereinafter referred to as "the MRTP Act" r/w Section 6 of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act" was issued by the State on 20-5-1994 in relation to the said plot. Thereafter there was a circular issued on 31-10-1994 in relation to the Government decision on the point of market value of lands to be acquired under the said Act. As there was considerable delay in passing the award, the owners of the plot filed Writ Petition in August, 1998 and consequent to the order passed therein on 7-9-1998, the

acquisition proceedings were disposed of by an award dated 8-2-1999. It was followed by the Notice under Section 12(2) of the said Act but the compensation amount fixed under the said award was not paid. Hence the petition bearing No.1392 of 1999 came to be filed on 6-5-1999 and pursuant to the interim order passed on 24-6-1999, the Corporation deposited an amount of Rs.5,35,47,040/- in the Court on 18-8-1999. Under the interim order dated 3-12-1999, the owners were permitted to withdraw a sum of Rs.1,57,00,000/- and the balance being kept invested.

4. While challenging the impugned award and the circular, Sri K.K. Singhvi, the learned senior counsel appearing for the Corporation, drawing attention to Section 50 of the said Act which disentitles the local authority for whose benefit the land is sought to be acquired to seek reference under Section 18 in relation to the award passed pertaining to the acquired land, submitted that the Land Acquisition Officer, in the case in hand, after discarding the sale instances submitted before him in support of the claim regarding valuation of the land, without ascertaining the market value of the land sought to be acquired, merely on the basis of the ready reckoner proceeded to award the compensation in relation to the land in question. Placing reliance in the decisions of the Apex Court in the matter of **Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun,**

through its Secretary v. Mohammed Ibrahim and another, reported in (2004) 2 SCC 286 and **Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P. and others,** reported in (1994) 4 SCC 595, it was submitted that as per the Apex Court ruling the market value of the land acquired cannot be ascertained merely on the basis of the ready reckoner and therefore, the fixation of the compensation by the Land Acquisition Officer, defying the said ruling, discloses arbitrary exercise of powers and hence his award to be bad in law and therefore needs to be set aside and the matter to be remanded for fresh adjudication as regards the compensation to be paid to the owners of the land acquired. The impugned circular which mandates the Land Acquisition Officer to follow the ready reckoner for the valuation of the acquired properties is contrary to the provisions of Section 23 of the said Act and the said ruling. Besides, it seeks to divest the Land Acquisition Officer from his discretionary power which he is otherwise entitled to exercise under the statutory provisions applicable to the cases of land acquisition. He has further submitted that the Land Acquisition Officer in the absence of sale instances in relation to the pieces of land comparable with the land in question, merely by referring to the ready reckoner, could not have fixed the compensation at the rate which has been fixed in relation to the land in question.

5. Sri Milind Sathe, the learned Advocate appearing for the State has submitted that the impugned circular nowhere issues any mandate to the Land Acquisition Officer to follow the ready reckoner without ascertaining as to whether the amount specified as the market value of a land in the particular area can be applied to the land acquired ignoring the evidence adduced by the parties. On the contrary it merely lays down certain guide-lines to ascertain the market value of the land under acquisition and therefore no fault can be found with the said circular. He has further submitted that the Land Acquisition Officer, having discarded the sale instances being of no help to ascertain the market value, after taking into consideration the location and the nature of the land in question, and considering the same being from the area for which the slab mentioned in the ready reckoner is applicable, further taking into consideration the advantages and disadvantages in relation to the land in question, has arrived at the market value of the land and therefore there is no illegality committed by the Land Acquisition Officer nor the award discloses any arbitrariness in the matter of ascertaining the market value of the land in question.

6. Sri E.P. Bharucha, the learned senior counsel appearing for the respondent No.4, taking us through the relevant portion of the impugned award, has submitted

that the Land Acquisition Officer taking into consideration the location, advantages and disadvantages of the land in question and the value of the land in the locality disclosed from the ready reckoner has arrived at the market value of the land and such a procedure cannot be found fault with, more particularly bearing in mind the provisions of the Bombay Stamp (Determination of True Market Value Property) Rules, 1995, hereinafter referred to as "the Stamp Rules". According to the learned Advocate, the decision of the Apex Court in the matter of **Jawajee Nagnatham's** case (supra) is clearly distinguishable in as much as that the said matter arose from a decision of the Andhra Pradesh High Court and in the State of Andhra Pradesh, there are no Rules like the Stamp Rules. Under the Stamp Rules, there is a statutory procedure laid down for the purpose of preparation of the ready reckoner in relation to the prices of the land and therefore reliance placed in the ready reckoner prepared on the basis of such statutory provisions cannot be found fault with, nor the decision in Jawajee Nagnatham's case can be of any help to the petitioner-Corporation to find fault with the procedure adopted by the Land Acquisition Officer for ascertaining the market value. He has further submitted that the ready reckoner is prepared after taking into consideration all the necessary data required for the purpose of ascertaining the market value of the land and it takes into consideration not only the location but

also the nature of the land as well as the other relevant factors necessary to ascertain the market value and that is apparent from the provisions of law comprised under Rules 3 and 4 of the Stamp Rules. He has also made a serious grievance about the failure on the part of the Corporation to take possession of the land acquired, while contending that on the one hand the owner is informed about the acquisition of his land and thereby the owner's right to utilise the plot to his advantage is freezed and on the other hand no compensation on account of the acquisition of land is paid though the award was passed as long back as in the year 1999.

7. In the facts and circumstances of the case and upon hearing the learned Advocates, three points arise for consideration. Firstly, whether the Land Acquisition Officer can fix the market value of a land under acquisition solely on the basis of ready reckoner regarding the rates of land in the locality prepared under the Stamp Act? Secondly, whether the circular dated 31-10-1994 interferes with the discretion of the Land Acquisition Officer in the matter of fixation of the market value for the land acquired and therefore is bad in law? Thirdly, whether the Corporation can postpone to take over possession of the acquired land even after pronouncement of the award?

8. The Apex Court in **Krishi Utpadan Mandi Samiti's** case (supra) had disapproved the decision of the reference Court in relation to the market value of the land acquired solely on the basis of the order of the Stamp Officer while reiterating its earlier decision in the matter of Jawajee Nagnatham's case. In Jawajee Nagnatham's case the Apex Court while dealing with the question as to whether the valuation register can be an evidence to determine the market value of a land had observed that such registers are prepared and maintained for the purpose of collecting stamp duty and it has no statutory base or force and therefore it cannot form a foundation to determine the market value of the land mentioned in the instrument brought for registration and equally it would not be a basis to determine the market value under Section 23 of the said Act. The law on the point that such register, which is essentially prepared for ascertaining the market value of the land which is the subject-matter of an instrument brought for registration, having no statutory base or force, cannot be a reliable evidence for the purpose of ascertaining the market value of the land sought to be acquired under the said Act or the MRTP Act is well-settled.

9. The ruling of the Apex Court undoubtedly discloses that the ready reckoner in the case before it was prepared without any statutory basis. Sri Bharucha, however, while referring to Rules 3 and 4 of the Stamp

Rules, has sought to contend that those rules make necessary provision for the required statutory basis for the purpose of preparation of the ready reckoner in relation to the prices of the land in different locality and therefore the said decision of the Apex Court which is in relation to the ready reckoner prepared without statutory basis can be of no help to the petitioner-Corporation in the case in hand.

10. Undoubtedly, in terms of Rules 3 and 4 of the Stamp Rules, there are certain guide-lines prescribed for the purpose of preparation of ready reckoner in relation to the prices of the land in a locality. However, it is also to be noted that the said provisions regarding the basis for preparation of ready reckoner have been inserted by way of amendment to the Stamp Rules with effect from 14-8-1995. In the case in hand, undisputedly, the Notification in terms of Section 126 of the MRTP Act was issued on 20-5-1994. The impugned award records the date of publication of the Notification being 25-5-1995 and the same to be the relevant date for valuation. The said date of 25-5-1995 refers to the publication of the notice on the site. In fact, the notice was published in the official gazette on 21-7-1994. Obviously therefore, the relevant date for the purpose of fixation of the market value would be 21-7-1994 and not the date on which the Notification was published at the site. The Stamp Rules which were in

force prior to 14-8-1995 did not prescribe the procedure which is enumerated under Rules 3 and 4 of the Stamp Rules. In fact, the earlier Rules were the Bombay Stamp (Determination of True Market Value Property) Rules, 1981, hereinafter referred to as "the Stamp Rules of 1981". Perusal of the Stamp Rules of 1981 nowhere discloses any procedure similar to one prescribed under Rules 3 and 4 of the Stamp Rules. Being so, any ready reckoner which was prepared prior to 14-8-1995 cannot be said to have any statutory basis as such. Hence the decision of the Apex Court relied upon on behalf of the Corporation would squarely apply to the facts of the case in hand.

11. Even otherwise, perusal of Rules 3 and 4 of the Stamp Rules though would disclose that for the purpose of preparation of the ready reckoner, the data to be collected includes average annual rates, grouping of the properties, sub-grouping and classification depending upon the types of the land, types of construction, locational and situational advantages or dis-advantages of property, and for arriving at the final figure of the market value for the purpose of ready reckoner, the Rule 4(2) specifically provides that "While working out the average rates, of land and buildings, the concerned officers shall take into account the established principles of the valuation and any other details that they may deem necessary.". Essentially the ready

reckoner would be in relation to the average rates. Being so, it can serve as the guide-line but cannot be a substantive piece of evidence regarding the market value of a land under acquisition. Though such ready reckoner prepared subsequent to the Stamp Rules and prepared according to the provisions comprised under Rules 3 and 4 could be of some help to the Land Acquisition Officer in ascertaining the market value of the land but by itself the ready reckoner cannot be a substantive piece of evidence to arrive at the final figure regarding the market value. Such evidence will have to be read along with the other materials on record and there must be some corroborative piece of evidence in support of the average rate arrived at in the ready reckoner. The rate slab for a particular area specified in the ready reckoner should not be accepted as the final rate for the entire area of the locality irrespective of the location of the land under acquisition in the concerned locality, the nature of land and the advantages and disadvantages of such land. All these factors, factually and legally, will have to be considered and the necessarily other evidence in relation to the market value vis-a-vis the advantages and disadvantages will have to be taken note of and properly weighed before arriving at the final figure regarding the market value of the land under acquisition.

12. In fact the Apex Court as long back as 1959 in the

matter of **The Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty,** reported in AIR 1959 SC 429 had laid down the methodology to be followed for the purpose of ascertaining the market value of the land sought to be acquired. The method of valuation which got the judicial recognition under the said decision requires proper consideration of the experts' opinion, price paid within a reasonable time in bona fide transaction of purchase of land acquired or land adjacent to the land acquired and possessing similar advantages and the proof of areas purchased, and the actual or immediate prospective profits of the land acquired. By no stretch of imagination it can be assumed that the ready reckoner would reveal all these aspects of the valuation and particularly the actual and immediate prospective profits of the land under acquisition. Therefore, the party whose land is sought to be acquired has to produce necessary evidence in support of the market value, as claimed by him. Ignoring those materials and merely on the basis of the ready reckoner, it is neither possible nor permissible to ascertain the market value of such land.

20th September, 2005

13. The very concept of aggregate the rate or the price of the land or the properties in a particular locality excludes consideration of advantages and disadvantages

of individual plots and therefore the question of applying the aggregate rates arrived at in the ready reckoner for ascertaining the market value of the land acquired does not arise at all. It is well-settled that in case of fixation of the market value of the land under acquisition on the basis of the evidence led by the parties, the issue of comparability i.e. the comparison between the land acquired and the land which is the subject-matter of the documentary evidence sought to be produced by the parties, should be considered and the market value of the land acquired has to be ascertained bearing in mind the provisions of Section 23 and 24 of the Land Acquisition Act as well as the judicial pronouncements in that regard. Though the provisions of Sections 23 and 24 of the said Act are applicable to the proceedings before the reference Court, the principle behind the said provisions should not be ignored by the Land Acquisition Officer while fixing the compensation under Section 11 of the said Act. Being so, the contention that because the ready reckoner has statutory basis since 1995 that same could safely be relied upon for ascertaining the market value of the land acquired cannot be accepted.

14. Perusal of the impugned award in the case in hand undoubtedly discloses that the Land Acquisition Officer had discarded the sale instances which were sought to be relied upon as of no assistance to ascertain the market

value of the land in question and then after referring to the rate stated to have been disclosed by the Deputy Director of Town Planning and the slab of Rs.3000/- per sq.ft. in relation to the "A" Ward in the residential zone under the development plan in the ready reckoner and taking note of the nature of the land in question and few of its advantages and disadvantages has fixed the market value of the land in question at the rate of Rs.40,000/- per sq.mtr.

15. However, while taking into consideration the nature of the land and few of the advantages and disadvantages in relation to the land under acquisition and applying the rate disclosed under the ready reckoner to be the basis for arriving at the market value of the land in question, the reference Court totally failed to deal with the issue relating to comparability between the land in question and the land which was the subject-matter of fixation of the aggregate value at Rs.3000/- per sq.ft. under ready reckoner in relation to "A" Ward of the residential zone of the development plan. Merely because the aggregate value in the "A" Ward of the residential zone in the locality was disclosed to be Rs.3000/- per sq.ft., that itself cannot be the basis for ascertaining the market value merely by referring to the nature of the land in question along with few of its advantages and disadvantages. It was also necessary to consider the factors which might have

weighed with the authorities in arriving at the aggregate value of the land in the "A" Ward in the residential zone. Without ascertaining those factors and comparing them with the advantages and disadvantages attached to the land in question along with the nature of the land in question, if one proceeds to adopt the rates under ready reckoner, then it would reveal arbitrariness in evaluating the market value of the land acquired. Evidently, the award nowhere discloses the necessary exercise in that regard having been done by the Land Acquisition Officer before accepting the aggregate value of Rs.3000/- disclosed in the ready reckoner to be the basis for arriving at the market value of the land in question.

16. In the absence of consideration of the comparability of the land in question with the land for which the aggregate value of Rs.3000/- per sq.ft. was fixed in the ready reckoner, it discloses arbitrary exercise of power by the Land Acquisition Officer in applying the said criteria for fixation of the market value of the land in question. The petitioner-Corporation, therefore, is justified in contending that the Land Acquisition Officer did not apply the prescribed procedure, known to law, and well-settled by a catena of judicial pronouncements of the Apex Court as well as of this Court in relation to the methodology to be followed for the purpose of

ascertaining the market value of the land acquired. Undoubtedly, in case of fixation of the market value, it would always involve some guess work. However, the guess work cannot be without basis. It should reveal proper application of mind not only to the nature of the land and its advantages and disadvantages which is the subject-matter of the acquisition but also to the land which has been the subject-matter of the documentary evidence sought to be produced in support of the claim for a particular valuation of the land under acquisition. Once the same is not disclosed in the assessment of the evidence by the Land Acquisition Officer before arriving at the particular value of the land, certainly it would be an arbitrary exercise of powers in that regard and that itself would justify interference by this Court in writ jurisdiction when the aggrieved party has no alternative efficacious remedy either under Section 18 of the said Act or similar such remedy.

17. In the circumstances, therefore, the valuation sought to be arrived at by the Land Acquisition Officer in the case in hand cannot be sustained and the award in that regard will have to be quashed and the matter will have to be remanded to the concerned authorities to ascertain the market value in accordance with the provisions of law and bearing in mind the observations hereinabove, within a specified time.

18. As regards the circular dated 31-10-1994 is concerned, it comprises of two parts. The first part relates to the Government decision relating to the policy of the Government in relation to the matters pertaining to evaluation of the market value of the acquired land. Secondly, it provides for the procedure to be followed by the Land Acquisition Officer for obtaining the information regarding the ready reckoner of land rates. As far as the first part of the decision is concerned, it essentially relates to the approach of the Government officers that should be while placing the say of the Government before the Land Acquisition Officer in any given case of a land acquisition. It does not mandate, nor it can, to the Land Acquisition Officer to follow any particular methodology for evaluating the market value of the land acquired. As rightly submitted by Sri Sathe, it could at the most be construed as the guidelines for such officers, but in no case a mandate. The discretion of the Land Acquisition Officer in such matters remains undisturbed and the circular in no way interferes therein. As regards the second part of the decision, it merely informs the Land Acquisition Officers that, in case they need to get the information regarding the land rates fixed under the ready reckoner, they may do so by calling for necessary information in that regard from the officer named in the decision. Proper reading of the circular, therefore,

would show that there is no substance in the challenge to the said circular and it does not in any manner encroach upon the powers of the Land Acquisition Officer in relation to fixation of compensation for an acquired land.

19. The owners of the land have made grievance regarding reluctance on the part of the Corporation to take possession of the land and at the same time non-payment of the compensation as was assessed by the Land Acquisition Officer. Undoubtedly, as regards the compensation, it is sought to be disputed and therefore the Writ Petition No.2687 of 1999 has been filed. Referring to Section 34 of the said Act, it is contended that taking over of possession would have compelled the Corporation to pay the interest at the rate of 15% per annum till the date of payment of the entire compensation and there being a serious dispute as regards the amount of compensation payable to the owners, it was decided not to take possession of the land in order to avoid unnecessary financial burden to the Corporation.

20. Undoubtedly, in terms of Section 34 of the said Act, consequent to taking over of possession of the land, the interested person would be entitled to interest at the rate of 9% per annum for the first year from the date of taking over of the possession till the

date of payment of the entire compensation and in case the compensation is not paid within the said period, then thereafter at the rate of 15% per annum on the balance amount which remain to be paid. However, at the same time, it is also to be noted that sub-section (3) of Section 6 of the said Act clearly provides that the declaration under Section 6 shall be conclusive evidence that the land is needed for a public purpose and after making such declaration the Government would acquire the land in the manner specified in the said Act. In terms of Section 24, no compensation is available in relation to any development carried out in such land after issuance of the Notification under Section 4 of the said Act. It is also a matter of record that all the necessary steps were taken in the matter for completion of the acquisition proceedings and even the award was passed. It cannot be disputed that from the date of publication of declaration under Section 4, the land owners right to utilise the land to the best of his advantage are not curtailed yet any development brought thereafter cannot be the subject-matter of compensation payable on account of acquisition of such property. In other words, the right of the owner of the property to utilise his property to his best advantage virtually stands jeopardised, though not freezed, from the date of issuance of the declaration under Section 4 of the said Act. Considering the same, the Legislature has included the provisions under Section 11A, apart from prescribing

limitation even for issuance of Section 6 declaration after issuance of the Notification under Section 4. Under Section 11A, the award is required to be passed within a period of two years from the last date of publication of the declaration under Section 6. This clearly discloses the intention of the Legislature not to hamper the development of the land indefinitely on account of the acquisition proceedings or to leave the land without being utilised to the best of his advantage by the owner for indefinite period and in case the Government does not intend to proceed with the acquisition proceedings, it can be made known to the land owner within a specified time by taking resort to the provisions made under Section 48 of the said Act. These provisions, therefore, disclose necessity for completion of the acquisition proceedings including the taking over of possession of the acquired land within a reasonable time after passing of the award to avoid unnecessary hardship to the owner of the land. Considering the same, merely because the acquiring body would be required to pay interest on the delayed payment of compensation, that cannot be a justification for reluctance on the part of the Corporation to take possession of the land once it has decided to acquire the same. Being so, the owners of the land are justified in contending that there was no justifiable reason for the Corporation to avoid indefinitely to take possession of the land acquired. The contention on

behalf of the Corporation that the it would have to pay interest is no explanation at all and therefore cannot be a justification for reluctance on the part of the Corporation to take possession of the land. The statutory benefits assured under Section 34 cannot be sought to be defeated merely on the ground that the possession would compel the Corporation to pay the interest on the amount payable in accordance with the award by the authority statutorily empowered to pass.

21. The possession of the land should be taken within a reasonable period after the pronouncement of the award and payment of the compensation fixed in terms of the statutory provisions. In case there is any difficulty in taking over the possession, certainly the rights of the owners of the land cannot be allowed to remain jeopardised for an indefinite period. In case of difficulties, nothing prevents the Government from exercising the power under Section 48 wholly or partly in relation to the subject-matter of the acquisition, including for the reasons where there are financial constraints, apart from various other reasons.

22. For the reasons stated above, therefore, the Writ Petition No.2687 of 1999 filed by the Corporation needs to be allowed to the extent of quashing the impugned award and remanding the matter to the Land Acquisition Officer with the direction to ascertain the market value

in accordance with the provisions of law and bearing in mind the observations hereinabove, within a period of six months from the date of receipt of the writ of this Court, while permitting both the parties to lead whatever evidence they want to lead in support of their rival contentions, including the Corporation.

23. The Writ Petition No.1392 of 1999 in the facts and circumstances, therefore, while making the observations as stated above, no relief is called for and hence the petition is accordingly disposed of.

24. The rule is made absolute in Writ Petition No.2687 of 1999 in above terms while the rule is discharged in Writ Petition No.1392 of 1999. There shall be no order as to costs.

25. As regards the amount which has been already ordered to be deposited, and which has been invested, the same shall continue to remain invested till the disposal of the proceedings before the Land Acquisition Officer and for a period of six weeks thereafter, and shall be subject to the final decision in the acquisition proceedings. As regards the amount which has been already collected by the owners of the land,

same too shall be subject to the final decision in the land acquisition proceedings.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**